

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

PATRICIA DAFFIN

Plaintiff,

v.

FORD MOTOR COMPANY

Defendant.

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:
:

Case No. C-1-00 458

Judge Dlott

**DECLARATION OF
THOMAS A. KUCZAJDA**

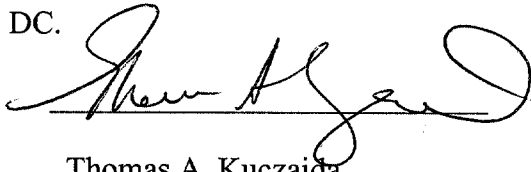
I, Thomas A. Kuczajda, declare as follows:

1. I am an associate of O'Melveny & Myers LLP, and I am appearing in this action on behalf of defendant Ford Motor Company. I have personal knowledge of the following facts unless otherwise stated and could and would competently testify to them if called to do so in a court of law.

2. Attached hereto as Tab 1 is a true and correct copy of the Settlement Agreement in *Meyer v. Nissan North America*, No. BC263136 (Cal. Super. Ct. July 25, 2003).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 21, 2003 at Washington, DC.


Thomas A. Kuczajda

TAB 1

1 KEVIN P. RODDY (State Bar No. 128283)
2 AMANDA L. HORN (State Bar No. 213891)
3 HAGENS BERMAN LLP
700 South Flower Street, Suite 2940
Los Angeles, CA 90017-4101
Telephone: (213) 330-7150

4 -and-
5 STEVE W. BERMAN
SEAN R. MATT
6 HAGENS BERMAN LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
7 Telephone: (206) 623-7292

8 JEFFREY S. GOLDENBERG
9 JOHN C. MURDOCK
MURDOCK GOLDENBERG SCHNEIDER & GROH, LPA
700 Walnut Street, Suite 400
10 Cincinnati, Ohio 45202
Telephone: (513) 345-8291

11 Attorneys for Plaintiffs
12

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF LOS ANGELES**
15 **CENTRAL CIVIL WEST COURTHOUSE**

16 ROBERT MEYER, Individually and on Behalf
17 of Himself and All Others Similarly Situated,

18 Plaintiff,

19 v.

20 NISSAN NORTH AMERICA, INC.,

21 Defendant.

Case No. BC263136

CLASS ACTION

SETTLEMENT AGREEMENT

Date: August 14, 2003

Time: 1:30 p.m.

Dep't: 324 [Judge Victoria G. Chaney]

Complaint Filed: 12/06/2001

23 Plaintiff Robert Meyer ("Plaintiff"), on behalf of himself and the Settlement Class (as
24 defined below), and Defendant Nissan North America, Inc. ("NNA"), by and through their
25 respective counsel, hereby enter into this Settlement Agreement on this 25 day of July, 2003,
26 subject to the approval of the Court in *Meyer v. Nissan North America, Inc.*, Case No. BC263136
27 (Cal. Super. Ct.).
28

SETTLEMENT AGREEMENT

ORIGINAL FILED

JUL 25 2003

**LOS ANGELES
SUPERIOR COURT**

1 **WHEREAS** on December 6, 2001, Plaintiff filed against NNA, in the Superior Court of the
2 State of California for the County of Los Angeles, an action captioned *Meyer v. Nissan North*
3 *America, Inc.*, Case No. BC263136, seeking to represent a nationwide class of all persons in the
4 United States who own or lease 1999 and 2000 model-year Nissan Quest minivans, and alleging
5 that NNA breached the terms of the express warranty and the contract provided to such persons and
6 violated California's Unfair Competition Law, Consumers Legal Remedies Act, Song-Beverly
7 Consumer Warranty Act, and False Advertising Statute ("the Action");

9 **WHEREAS** the Court in the Action has ordered dismissed Plaintiff's claims under the
10 Consumer Legal Remedies Act, the Song-Beverly Consumer Warranty Act, and the False
11 Advertising Statute;

12 **WHEREAS** NNA's third demurrer and fourth and fifth motions to strike addressed to
13 Plaintiff's Second Amended Complaint are pending before the Court in the Action;

15 **WHEREAS** NNA has denied and continues to deny all claims alleged by Plaintiff in the
16 Action and any wrongdoing or liability of any kind;

17 **WHEREAS** Plaintiff, by and through his attorneys of record in the Action, has conducted
18 extensive discovery and a thorough examination and investigation of the facts and law relating to
19 all matters set forth in Plaintiff's Complaint, First Amended Complaint, and Second Amended
20 Complaint in the Action;

22 **WHEREAS** the parties to this Settlement Agreement have concluded that settlement is
23 desirable to avoid the time, expense, and inherent uncertainties of prosecuting and defending
24 protracted litigation and to resolve finally and completely the pending and potential claims of
25 Plaintiff and all persons in the Settlement Class (as defined below) relating to or arising out of the
26 matters alleged in Plaintiff's pleadings in the Action;

1 **WHEREAS** extensive arm's-length settlement negotiations have taken place between
 2 Class Counsel (as defined below) and NNA and, as a result, the parties to this Settlement
 3 Agreement have now reached an agreement, subject to Court approval, providing for a nationwide
 4 resolution of the claims relating to or arising out of the matters alleged in Plaintiff's pleadings in
 5 the Action; and

6
 7 **WHEREAS** Plaintiff and Class Counsel (as defined below) have examined and considered
 8 the benefits to be provided to the Settlement Class (as defined below) by this Settlement
 9 Agreement and believe that the settlement offers significant and meaningful benefits to all persons
 10 in the Settlement Class and is fair, reasonable, adequate, and in the best interest of all persons in
 11 the Settlement Class, taking into account the risks of litigation and the length of time that would be
 12 required to complete the litigation, including any appeals;

13
 14 **NOW, THEREFORE,** Plaintiff and NNA agree as follows:

15 **I. DEFINITIONS**

16 As used in this Settlement Agreement, and solely for the purpose of consummating and
 17 implementing this Settlement Agreement, the following terms shall have the meanings set forth
 18 below.

19 A. **Action.** "Action" shall mean the lawsuit that Plaintiff commenced against NNA on
 20 December 6, 2001, in the Superior Court of the State of California for the County of Los Angeles,
 21 Case No. BC263136.

22
 23 B. **Applicable Warranty Period.** "Applicable Warranty Period" shall mean the
 24 following: (1) For all 1999 and 2000 model year Nissan Quests owned or leased by persons who,
 25 when they seek or sought warranty service, are or were residents of states other than California, the
 26 5-year or 60,000-mile Powertrain Limited Warranty; (2) for 1999 and 2000 model year Nissan
 27 Quests owned or leased by persons who, when they seek or sought warranty service, are or were
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1 residents of the State of California, the 7-year or 70,000-mile California Emission Long-Term
2 Defect Warranty; (3) if a Settlement Class Member (as defined below) purchased from NNA an
3 NNA extended warranty (called the Security Plus Vehicle Protection Plan), the time and mileage
4 provided for in the plan purchased, if the extended warranty provides coverage greater than the
5 otherwise Applicable Warranty Period as defined in this paragraph I.B.

6
7 C. **Claim Form and Instructions.** "Claim Form and Instructions" shall mean the form
8 attached hereto as Exhibit "A," to be approved by the Court and thereafter made available to
9 Settlement Class Members (as defined below) to provide them with instructions and for them to
10 complete, sign under penalty of perjury, and submit to the Settlement Administrator (as defined
11 below) to request a reimbursement payment for a Cleaning Procedure (as defined below) or a
12 throttle body assembly replacement in accordance with paragraph IV.B of this Settlement
13 Agreement.

14
15 D. **Class Counsel.** "Class Counsel" shall mean the law firms of Murdock Goldenberg
16 Schneider & Groh, LPA, by John C. Murdock and Jeffrey S. Goldenberg, and Hagens Berman
17 LLP, by Steve W. Berman, Sean R. Matt, and Kevin P. Roddy.

18 E. **Class Settlement.** "Class Settlement" shall mean the settlement provided by the
19 totality of all terms and conditions in this Settlement Agreement.

20
21 F. **Cleaning Procedure.** "Cleaning Procedure" shall mean the cleaning procedure that is
22 described in NNA Technical Service Bulletin dated October 17, 2000 (Reference NTB00-083), and
23 is intended to remove deposits from the throttle body assembly in a 1999 or 2000 model year
24 Nissan Quest.

25 G. **Court.** "Court" shall mean Department 324 of the Superior Court of the State of
26 California for the County of Los Angeles.

1 H. **Effective Date.** "Effective Date" shall mean the first date after all the following have
2 occurred: (i) The Court has entered both the Preliminary Approval Order (as defined below) and
3 the Final Approval Order (as defined below); (ii) the time for all objections, appeals, and other
4 challenges, both in the Court and on appeal, to the Class Settlement, the Final Approval Order (as
5 defined below), and the judgment in the Final Approval Order has elapsed; and (iii) the Class
6 Settlement, Final Approval Order, and judgment in the Final Approval Order have become final,
7 either because no timely objection, appeal, or other challenge was made to them or because every
8 timely challenge has been finally adjudicated and rejected and no further appeal to any court,
9 including by writ of certiorari or other extraordinary writ, can be taken.
10

11 I. **Fairness Hearing.** "Fairness Hearing" shall mean the final hearing, to be held after
12 notice has been provided to the Settlement Class (as defined below) in accordance with paragraph
13 IV.A of this Settlement Agreement, (1) to determine whether to grant final approval to (a) the
14 certification of the Settlement Class, (b) the designation of Plaintiff as the representative of the
15 Settlement Class, (c) the designation of Class Counsel as counsel for the Settlement Class, and (d)
16 the Class Settlement (as defined below); (2) to rule on Class Counsel's application for an award of
17 attorneys' fees and reimbursement of expenses; and (3) to consider whether to enter the Final
18 Approval Order (as defined below).
19

20 J. **Final Approval Order.** "Final Approval Order" shall mean the proposed Order
21 Granting Final Approval to Class Settlement and Entry of Final Judgment to be entered by the
22 Court in the form attached here to as Exhibit "B."
23

24 K. **Increased pedal resistance.** "Increased pedal resistance" shall mean a condition in
25 which, to increase the speed of a 1999 or 2000 model year Nissan Quest minivan (including from a
26 stop), the driver of the vehicle must apply greater force than is required in the same vehicle in the
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1 absence of an accumulation of carbonous deposits, visible to the naked eye of any ordinary person,
2 in the vehicle's throttle body assembly.

3 L. **NNA.** "NNA" shall mean Nissan North America, Inc., and its successors and assigns.

4 M. **Opt-Outs.** "Opt-Outs" shall mean persons in the Settlement Class who elect to be
5 excluded from the Class Settlement in the manner described in paragraph V.A. of this Settlement
6 Agreement.
7

8 N. **Opt-Out Period.** "Opt-Out Period" shall mean the period prescribed by the Court for
9 persons to elect to be excluded from the Class Settlement in the manner described in paragraph
10 V.A. of this Settlement Agreement.

11 O. **Parties.** "Parties" shall mean Plaintiff and NNA.

12 P. **Person.** "Person" shall mean any natural person, individual, corporation, partnership,
13 business organization or association, or any other type of legal entity.
14

15 Q. **Plaintiff.** "Plaintiff" shall mean Robert Meyer, the named plaintiff in the Action.

16 R. **Preliminary Approval Order.** "Preliminary Approval Order" shall mean the proposed
17 Order Granting Preliminary Approval to Class Settlement, to be entered by the Court in the form
18 attached hereto as Exhibit "C."

19 S. **Released Claims.** "Released Claims" shall mean all claims, actions, causes of action,
20 administrative claims, demands, debts, damages, costs, attorney's fees, obligations, judgments,
21 expenses, compensation, or liabilities, in law or in equity, whether now known or unknown,
22 contingent or absolute, other than claims for personal injury or wrongful death, that Plaintiff or any
23 Person in the Settlement Class (as defined below) now has or, absent this Settlement Agreement,
24 may in the future have had, against any of the Releasees (as defined below), by reason of any act,
25 omission, harm, matter, cause, or event whatsoever that has occurred at any time up to and
26 including the Effective Date, has been alleged or could have been alleged in the Action, and relates
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1 to any act, omission, breach, defect, harm, matter, cause, or event whatsoever alleged in any
2 pleading in the Action or arising out of the initiation, defense, or settlement of the Action.

3 T. **Releasees.** "Releasees" shall mean (a) NNA, together with its predecessors and
4 successors in interest and its present and former parents, subsidiaries, affiliates, and assigns,
5 whether foreign or domestic; (b) the respective past, present, and future officers, directors, agents,
6 representatives, servants, employees, attorneys, and insurers, whether foreign or domestic, of each
7 Person listed above in this paragraph I.T; and (c) all suppliers, distributors, wholesalers, dealers,
8 retailers, licensors, licensees, franchisees, public relations firms, advertising and production
9 agencies, and other entities, whether foreign or domestic, who were or are in, or played any role in,
10 the chain of design, testing, manufacture, assembly, distribution, marketing, sale, lease, installation,
11 or servicing of 1999 or 2000 model year Nissan Quests or their components.
12

13 U. **Settlement Administrator.** "Settlement Administrator" shall mean Rosenthal &
14 Company LLC, 35 Leveroni Court, Suite 150, Novato, California 94949, the entity selected by the
15 Parties to administer the Class Settlement in accordance with paragraphs III.B.5, IV, V, and VI of
16 this Settlement Agreement.
17

18 V. **Settlement Agreement or Agreement.** "Settlement Agreement" or "Agreement" shall
19 mean this Settlement Agreement and the exhibits attached hereto.
20

21 W. **Settlement Class.** "Settlement Class" shall mean all Persons in the United States
22 (including the District of Columbia) who purchased or leased a 1999 or 2000 model year Nissan
23 Quest on or before _____, 2003 [insert date 14 days prior to Court's entry of Preliminary
24 Approval Order].

25 X. **Settlement Class Members.** "Settlement Class Members" shall mean all Persons in
26 the Settlement Class who do not exclude themselves from the Class Settlement in the manner and
27 time prescribed in paragraph V of this Settlement Agreement.
28

1 Y. **Settlement Notice.** "Settlement Notice" shall mean the proposed form of written notice
2 that is attached hereto as Exhibit "D" and is to be approved by the Court and disseminated to the
3 Settlement Class in the manner described in paragraph IV.A of this Settlement Agreement.

4 Z. **Settling Parties.** "Settling Parties" shall mean Plaintiff, the Settlement Class Members,
5 and NNA.
6

7 AA. **Valid Claim.** "Valid Claim" shall mean a Claim Form that is timely submitted by a
8 Settlement Class Member in accordance with paragraph IV.B of this Settlement Agreement, is
9 signed under penalty of perjury by that Settlement Class Member, and contains all of the
10 information, statements, and declarations specified in paragraph IV.B of this Settlement
11 Agreement.

12 BB. **Vehicles.** "Vehicles" shall mean 1999 and 2000 model year Nissan Quest minivans.
13

14
15 **II. CONDITIONAL CERTIFICATION OF NATIONWIDE SETTLEMENT**
16 **CLASS**

17 A. Solely for the purpose of consummating and implementing this Settlement Agreement,
18 NNA stipulates to the conditional certification of the nationwide Settlement Class in the Action as
19 set forth in the Preliminary Approval Order. If for any reason the Effective Date does not occur,
20 NNA's stipulation to the certification of the Settlement Class, or to any other class or subclass,
21 shall be null and void.

22 B. This Settlement Agreement shall become null and void, no obligation on the part of
23 either of the Parties will accrue, and the Parties shall return to their respective positions in the
24 Action as those positions existed immediately before their execution of this Settlement Agreement,
25 if (1) the Court declines to certify the Settlement Class as provided in the Preliminary Approval
26 Order; (2) the Court alters any term of this Settlement Agreement in a manner that NNA believes
27 to be to NNA's detriment or that Class Counsel believes to be to the Settlement Class' detriment,
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1 or fails to enter the Preliminary Approval Order or the Final Approval Order in the form submitted
2 by the Parties; or (3) the number of members of the Settlement Class who exclude themselves from
3 the Settlement Class exceeds the maximum number of such exclusions separately agreed upon by
4 the Parties; provided, however, that NNA may, in its sole discretion, waive one or more of its
5 rights under this paragraph II.B by providing to Class Counsel a written waiver expressly stating
6 NNA's intention to waive one or more of its rights under this paragraph II.B.
7

8 **III. REQUIRED EVENTS**

9 Promptly after the Parties have executed this Settlement Agreement:

10 A. Class Counsel shall take all steps that are necessary to obtain the Court's approval of
11 the Settlement Agreement and the Class Settlement and shall take all steps that are consistent with
12 this Settlement Agreement and necessary to obtain final judicial approval of the Class Settlement
13 and dismissal with prejudice of the Action.
14

15 B. To effectuate the requirements of paragraph III.A of this Settlement Agreement, Class
16 Counsel shall submit this Settlement Agreement to the Court, and the Parties shall jointly move the
17 Court to enter the Preliminary Approval Order, which by its terms shall accomplish all of the
18 following:

- 19 1. Preliminarily approve the Class Settlement and this Settlement Agreement as
20 fair and reasonable to the Settlement Class;
- 21 2. Conditionally certify the Settlement Class as a nationwide class;
- 22 3. Designate Plaintiff as the representative of the Settlement Class;
- 23 4. Designate the law firms of Murdock Goldenberg Schneider & Groh, LPA,
24 by John C. Murdock and Jeffrey S. Goldenberg, and Hagens Berman LLP, by Steve W. Berman,
25 Sean R. Matt, and Kevin P. Roddy, as counsel for the Settlement Class;
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1 5. Designate Rosenthal & Company LLC as the administrator of the Class
2 Settlement (the "Settlement Administrator") and instruct the Settlement Administrator to perform
3 the following functions in accordance with the terms of this Settlement Agreement, the Preliminary
4 Approval Order, and the Final Approval Order:

5 a. Disseminate, in accordance with paragraph IV.A.1 of this Settlement
6 Agreement, the Settlement Notice and the Claim Form and Instructions.

7 b. Receive, evaluate, and either approve as meeting the requirements of
8 paragraph IV.B of this Settlement Agreement or disapprove as failing to meet those requirements,
9 Claim Forms sent by Persons seeking to receive reimbursement payments, all in accordance with
10 paragraph IV.B of this Settlement Agreement.

11 c. Provide to NNA and Class Counsel (i) a list of the names and
12 addresses of all Settlement Class Members who have submitted Claim Forms and whose Claim
13 Forms the Settlement Administrator has determined to be Valid Claims; (ii) a separate list of the
14 names and addresses of all Persons who have submitted Claim Forms and whose Claims Forms the
15 Settlement Administrator has determined not to be Valid Claims, together with a brief statement of
16 the basis for each denial; and (iii) within 14 days following the date specified in the Preliminary
17 Approval Order as the last date by which Claim Forms must be postmarked or received by the
18 Settlement Administrator, copies of all Claim Forms, together with all documents (e.g., receipts or
19 similar supporting evidence referred to in paragraph IV.B below) submitted therewith by the
20 claimants, all in accordance with paragraph IV.B. of this Settlement Agreement.

21 d. Mail, to each Person who has submitted a Claim Form that, in
22 accordance with paragraph IV.B of this Settlement Agreement, the Settlement Administrator has
23 determined not to be a Valid Claim, a Notice of Claim Denial in the form attached hereto as
24 Exhibit E, all in accordance with paragraph IV.B of this Settlement Agreement.

1 e. Mail, to each Person who has submitted a Claim Form that, in
2 accordance with paragraph IV.B of this Settlement Agreement, has been finally determined by the
3 Court not to be a Valid Claim, a Final Notice of Claim Denial in the form attached hereto as
4 Exhibit F, all in accordance with paragraph IV.B of this Settlement Agreement.

5 f. Process requests for exclusion from the Class Settlement in
6 accordance with paragraph V of this Settlement Agreement.

7 g. Process objections to the Class Settlement in accordance with
8 paragraph VI of this Settlement Agreement.

9
10 6. Approve the form, contents, and method of notice to be given to the
11 Settlement Class as set forth in paragraph IV.A.1 of this Settlement Agreement, and direct NNA to
12 provide, and cause to be provided, such notice and to file with the Court a declaration of
13 compliance with those notice requirements, as set forth in paragraph IV.A.5 of this Settlement
14 Agreement;
15

16 7. Establish procedures and schedule deadlines for Persons in the Settlement
17 Class to object to the Class Settlement or certification of the Settlement Class, to exclude
18 themselves from the Class Settlement, and to submit Claim Forms to the Settlement Administrator,
19 all consistent with paragraphs IV.B, V, and VI of this Settlement Agreement;
20

21 8. Schedule the Fairness Hearing for a date approximately, but no fewer than,
22 150 days after the date of the Preliminary Approval Hearing; and

23 9. Schedule deadlines for the filing of (a) papers in support of final approval of
24 the Settlement Class, designation of Plaintiff as the representative of the Settlement Class,
25 appointment of Class Counsel as counsel for the Settlement Class, and the Class Settlement; (b)
26 Class Counsel's application for an award of attorneys' fees and reimbursement of expenses; and (c)
27 objections to certification of the Settlement Class, to the designation of Plaintiff as the
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1 representative of the Settlement Class, to the appointment of Class Counsel as counsel for the
2 Settlement Class, or to the Class Settlement.

3 C. At the Fairness Hearing the Parties will jointly request the Court to enter the Final
4 Approval Order, which (1) grants final approval of the certification of the Settlement Class,
5 designation of Plaintiff as the representative of the Settlement Class, and designation of Class
6 Counsel as counsel for the Settlement Class, all as conditionally approved in the Preliminary
7 Approval Order; (2) grants final approval of the Class Settlement and this Settlement Agreement as
8 fair, reasonable, and adequate to the Settlement Class; (3) provides for the release of all Released
9 Claims and enjoins Settlement Class Members from prosecuting any of the Released Claims in the
10 future; (4) orders the dismissal with prejudice of all claims, causes of action, and counts alleged in
11 the Action, and incorporates the releases and covenant not to sue stated in this Settlement
12 Agreement, with each of the Parties to bear its or his own costs and attorneys' fees, except as
13 provided in paragraph IV.E below; and (5) preserves the Court's continuing jurisdiction over the
14 administration of the Class Settlement and enforcement of this Settlement Agreement.
15

16 D. Plaintiff, Class Counsel, and NNA will cooperate and take all reasonable actions to
17 accomplish the above. If the Court fails to enter either the Preliminary Approval Order or the Final
18 Approval Order, Plaintiff, Class Counsel, and NNA will use all reasonable efforts that are
19 consistent with this Settlement Agreement to cure any defect identified by the Court. If, despite
20 such efforts, the Court does not enter the Preliminary Approval Order and Final Approval Order,
21 the Parties will return to their prior positions in the Action, in accordance with paragraph II of this
22 Settlement Agreement.
23

24 IV. SETTLEMENT TERMS

25 A. Class Notice

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1 1. As soon as practicable, but no later than 75 days after the Court's entry of
2 the Preliminary Approval Order, NNA shall cause to be sent by the Settlement Administrator, by
3 first-class United States Mail, to every Person in the Settlement Class who reasonably can be
4 identified in NNA's records of original and current purchasers and lessees of Vehicles and in
5 supplemental vehicle-registration information to be obtained by NNA from R.L. Polk & Co., a copy
6 of the Settlement Notice and one Claim Form and one set of Instructions. Before the Settlement
7 Administrator mails such copies of the Settlement Notice, Claim Forms, and Instructions, NNA
8 shall provide to Class Counsel information describing the scope of its owner/lessee records and the
9 R.L. Polk & Co. information used to determine the addressees and how those records are maintained
10 and updated. Before mailing such notices, Claim Forms, and Instructions, the Settlement
11 Administrator will obtain address updates utilizing a National Change of Address database. In
12 mailing such notices, Claim Forms, and Instructions, the Settlement Administrator will utilize any
13 updated addresses thus obtained. A copy of the Settlement Notice, Claim Form, and Instructions
14 also will be posted on Class Counsel's website, www.hagens-berman.com, and linked to NNA's
15 website, www.nissanusa.com.

16 2. The Parties agree that the Settlement Notice provides to the Settlement Class
17 information sufficient to inform Persons in the Settlement Class of the essential terms of this
18 Settlement Agreement; appropriate means for obtaining additional information regarding the
19 Settlement Agreement and the Action; appropriate information about the procedures for Persons in
20 the Settlement Class to object to the Class Settlement or to exclude themselves from the Class
21 Settlement, if they should wish to do so; and appropriate means for and information about
22 submitting a Claim Form.

23 3. The Parties agree that the dissemination of the Settlement Notice by mail
24 and world-wide web in the manner specified above in paragraph IV.A.1 satisfies the notice
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1 requirements of due process and California law and would, if the Action had been brought in a
2 federal court, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.

3 4. The Parties will jointly request the Court to approve, in the Preliminary
4 Approval Order, the dissemination of the Settlement Notice, one Claim Form, and one set of
5 Instructions as set forth above in paragraph IV.A.1.

6 5. Within 85 days after the Court's entry of the Preliminary Approval Order,
7 NNA will file with the Court, and provide to Class Counsel a copy of, a declaration of compliance
8 with this plan of notice, including a statement of the number of persons to whom the Settlement
9 Notice, one Claim Form, and one set of Instructions were mailed.

10
11 B. Compensation to Settlement Class Members

12 1. NNA will compensate each Settlement Class Member who (a) during a
13 period in which the Settlement Class Member owned or leased a Vehicle that was still within the
14 Applicable Warranty Period for that Vehicle, and both before the date on which the Settlement
15 Class Member received the Settlement Notice and on or before the date that is 85 days after the date
16 the Court enters the Preliminary Approval Order, paid for either a Cleaning Procedure or the
17 installation of a new throttle body assembly necessitated by increased pedal resistance resulting
18 from a build-up of deposits in the throttle body assembly; and (b) submits to the Settlement
19 Administrator, within the time specified in the Preliminary Approval Order, a properly completed
20 and signed Claim Form and copies of receipts or similar documentary evidence, such as work
21 orders, showing the exact amount the Settlement Class Member paid for that Cleaning Procedure or
22 replacement throttle body assembly (including any tax for which the Settlement Class Member
23 seeks to be reimbursed). If, during a period in which the Settlement Class Member owned or leased
24 a Vehicle that was still within the Applicable Warranty Period for that Vehicle, the Settlement Class
25 Member paid for more than one Cleaning Procedure, or for the installation of more than one new
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1 throttle body assembly, necessitated by increased pedal resistance resulting from a build-up of
2 deposits in the throttle body assembly, NNA will compensate the Settlement Class Member for each
3 such payment as to which the Settlement Class Member timely meets the requirements set forth in
4 this paragraph IV.B.1.

5
6 2. Each Settlement Class Member who, during a period in which the Settlement
7 Class Member owned or leased a Vehicle that was still within the Applicable Warranty Period for
8 that Vehicle, and both before the date on which the Settlement Class Member received the
9 Settlement Notice and on or before the date that is 85 days after the date the Court enters the
10 Preliminary Approval Order, paid for either a Cleaning Procedure or for the installation of a new
11 throttle body assembly necessitated by increased pedal resistance resulting from a build-up of
12 deposits in the throttle body assembly, but who does not provide copies of receipts or similar
13 documentary evidence, such as work orders, showing the exact amount paid for each such service,
14 shall be eligible to receive from NNA one settlement check, in a sum of no more than \$75.00, as
15 payment in full for the aggregate of all such Cleaning Procedures or replacements for which the
16 Settlement Class Member claims to have paid, but for which the Settlement Class Member fails to
17 submit receipts or similar documentary evidence as described in paragraph IV.B.1 of this Settlement
18 Agreement.
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20
21 3. To receive a settlement reimbursement payment pursuant to paragraph
22 IV.B.2 of this Settlement Agreement, a Settlement Class Member meeting the requirements of that
23 paragraph must execute and submit to the Settlement Administrator, for each such Cleaning
24 Procedure or replacement, within the time specified in the Preliminary Approval Order, (a) a
25 properly completed and signed Claim Form; and (b) on the Claim Form, the name, address, and
26 telephone number of the service facility that performed each such cleaning or replacement; the year
27 and approximate month in which each such cleaning or replacement was performed; the
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1 approximate mileage on the vehicle when each such throttle body cleaning or replacement was
2 performed; and the amount the Settlement Class Member claims to be his or her best recollection of
3 the amount actually paid for each such cleaning or replacement.

4 4. Within 14 days following the date specified in the Preliminary Approval
5 Order as the last date by which Claim Forms must be postmarked or received by the Settlement
6 Administrator, the Settlement Administrator shall provide to NNA's counsel and to Class Counsel
7 copies of all Claim Forms, together with all documents (*e.g.*, receipts and similar evidence as
8 referred to in paragraph IV.B.1 above) submitted therewith by the claimants. The Settlement
9 Administrator also shall provide to NNA's counsel and Class Counsel, no more than every other
10 month, regular updates, at the request of either NNA's counsel or Class Counsel, as to the number
11 of Claim Forms received and whether any administrative problems have arisen.

12
13 5. If, after 60 days from the entry by the Court of the Final Approval Order and
14 the judgment therein, no notice of appeal of the judgment or any order in the Action has been filed,
15 the time provided for in Rule 2 of the California Rules of Court to take any such appeal has expired,
16 and any right to take any such appeal has been waived or otherwise lost, or if each such appeal that
17 has been taken has been finally adjudicated and the judgment and Final Approval Order have been
18 upheld in all respects by each such final adjudication, the Settlement Administrator, shall, as soon
19 thereafter as reasonably practicable, do each of the following: (1) Adjudicate all claims submitted
20 in Claim Forms in connection with the Class Settlement; and (2) after all claims have been
21 adjudicated by the Settlement Administrator as being either Valid Claims or not Valid Claims, do
22 each of the following: (a) Send to NNA's counsel and Class Counsel, by first-class United States
23 Mail, a list of all claims (*i.e.*, claimant's name, address, and Vehicle Identification Number)
24 determined by the Settlement Administrator to be Valid Claims ("the Valid Claims List") and a
25 separate list of the names and addresses of all Persons who have submitted Claim Forms and whose
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1 Claims Forms the Settlement Administrator has determined not to be Valid Claims, including a brief
2 statement of the basis for each such denial ("the Disapproved Claims List"); and (b) mail, by first-
3 class United States Mail, to all claimants whose claims have been determined by the Settlement
4 Administrator not to be Valid Claims, notice, in the form of the Notice of Claim Denial in Exhibit E
5 hereto, that their claims have been denied by the Settlement Administrator.

6
7 6. If any claimant whose claim the Settlement Administrator has denied wishes
8 to challenge the denial, the claimant may commence a review of the denial by mailing to Class
9 Counsel, by first-class United States Mail, within 30 days after the Settlement Administrator has
10 mailed to the claimant a Notice of Claim Denial, a copy of the claim and the Notice of Claim
11 Denial. Class Counsel shall then promptly attempt to resolve the disputed claim with NNA. If,
12 within 14 days after having received the claim documents from the claimant, Class Counsel have
13 been unable to resolve the dispute through good-faith negotiation with NNA, Class Counsel shall,
14 within 21 days after having received the claim from the claimant, so notify the claimant by first-
15 class United States Mail and, with the notification, inform the claimant that (i) the claimant may,
16 within 14 days after Class Counsel have mailed the notification, file with the Court a motion for
17 judicial review of the Settlement Administrator's denial; (ii) any such motion must be accompanied
18 by a written statement of the basis for challenging the Settlement Administrator's denial, together
19 with any documentary evidence supporting the challenge; and (iii) copies of the motion and
20 accompanying materials must be mailed to Class Counsel and counsel for NNA, by first-class
21 United States Mail, within 14 days after Class Counsel have mailed the notification to the claimant.
22 Within 14 days after a claimant has mailed any such motion and accompanying materials to Class
23 Counsel and counsel for NNA, NNA may file a written opposition to the motion, together with any
24 documentary evidence supporting the opposition, and Class Counsel may file a written
25 memorandum in support, together with any supporting documentary evidence. The Court will rule
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1 on the motion based solely on the written motion and statement, the written opposition, any
2 memorandum in support submitted by Class Counsel, and any documentary evidence submitted
3 with any of them. The resolution of any claims by this process shall not affect the finality of the
4 Final Approval Order or the judgment therein.

5
6 7. NNA may object to any claim made by a Settlement Class Member and
7 approved by the Settlement Administrator as a Valid Claim, if the claim appears to NNA to be
8 fraudulent or not in compliance with the requirements of this Settlement Agreement. To challenge
9 the Settlement Administrator's approval of any claim as a Valid Claim, NNA must, within 30 days
10 after NNA has received from the Settlement Administrator the Valid Claims List pursuant to
11 paragraph IV.B.5 above, mail to Class Counsel, by first-class United States Mail, written notice of
12 NNA's objection. NNA and Class Counsel will attempt in good faith to resolve each such
13 objection. If NNA and Class Counsel are unable to resolve an objection within 20 days after NNA
14 has mailed to Class Counsel the written notice of NNA's objection, NNA will, within 30 days after
15 having mailed to Class Counsel the written notice of NNA's objection, file with the Court a motion
16 for judicial review of the Settlement Administrator's approval of the disputed claim. Any such
17 motion shall be accompanied by a written statement of NNA's basis for challenging the Settlement
18 Administrator's approval, together with any documentary evidence supporting the challenge. NNA
19 shall serve on the claimant and Class Counsel, by first-class United States Mail, copies of the
20 motion and accompanying materials. Within 20 days after NNA has mailed the motion and
21 accompanying materials to Class Counsel, the claimant (on his own behalf, by separate counsel, or
22 by Class Counsel on the claimant's behalf) may file and serve on NNA's counsel a written
23 opposition to NNA's motion, together with any documentary evidence supporting the opposition.
24 The Court will rule on the motion based solely on the written motion and statement, the written
25 opposition, and any documentary evidence submitted with either of them. The resolution of any
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1 claim by this process shall not affect the finality of the Final Approval Order or the judgment
2 therein.

3 8. Each payment required to be made to a claimant pursuant to paragraphs
4 IV.B.1 through IV.B.7 shall be made by NNA by sending, or causing to be sent, a check to the
5 claimant, by first-class United States Mail, (a) within 40 days after NNA's receipt from the
6 Settlement Administrator of written notice stating that the Settlement Administrator or the Court has
7 approved the claimant's claim and stating the amount to be paid to the claimant, if NNA has not
8 timely notified Class Counsel of an objection pursuant to paragraph IV.B.7 above, or (b) within 10
9 days after NNA receives notice that the Court has denied NNA's motion and objections pursuant to
10 paragraph IV.B.7 above. If the Court denies a claim pursuant to paragraph IV.B.6 or IV.B.7, NNA
11 shall promptly send to the Settlement Administrator written notice of the denial, and the Settlement
12 Administrator shall send to the claimant, within 10 days after the Settlement Administrator receives
13 from NNA notice of the Court's decision denying payment, a Final Notice of Claim Denial in the
14 form attached hereto as Exhibit F.

15 9. If any notice of an appeal from the Final Approval Order or judgment
16 therein is timely filed by any party, objector, claimant, or other Person, the Class Settlement shall
17 not be or become final or effective, and NNA shall have no obligation to make any payment to any
18 Settlement Class Member, until ten business days after each such appeal has been finally
19 adjudicated and the Final Approval Order and the judgment therein have been upheld in all respects
20 by that final adjudication.

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24 C. Cleaning Procedures During Applicable Warranty Period

25 1. If a Settlement Class Member presents to an authorized NNA dealership a
26 Vehicle owned or leased by that Settlement Class Member and informs the authorized NNA
27 dealership that the Vehicle is experiencing increased pedal resistance, and if the authorized NNA
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1 dealership confirms that the Vehicle is within its Applicable Warranty Period and performs the
2 Cleaning Procedure, NNA shall cover the Cleaning Procedure under warranty.

3 2. NNA shall provide to all of NNA's authorized Nissan dealerships
4 throughout the United States a notice, in the form attached hereto as Exhibit G, instructing them
5 that, when the conditions set forth in paragraph IV.C.1 of this Settlement Agreement are satisfied,
6 future Cleaning Procedures are to be performed under warranty at no charge to Settlement Class
7 Members during the Applicable Warranty Period.

8 3. If a Settlement Class Member directly informs NNA, by contacting NNA's
9 Customer Assistance Request Department or calling a toll-free number provided in the warranty
10 section of the owner's manuals for 1999 or 2000 model year Nissan Quests, that the Settlement
11 Class Member's Vehicle is experiencing increased pedal resistance, NNA shall inform the
12 Settlement Class Member that (1) the Vehicle may need a Cleaning Procedure, and (2) NNA's
13 authorized Nissan dealerships will perform the Cleaning Procedure under warranty at no cost to the
14 Settlement Class Member if the Vehicle is within its Applicable Warranty Period.

15 4. In the manner shown in Exhibit D, the Settlement Notice shall inform the
16 Settlement Class that future Cleaning Procedures performed by authorized Nissan dealers are to be
17 covered under warranty during the Vehicles' Applicable Warranty Period.

18 5. Beginning on July 15, 2004, and continuing through January 15, 2008, NNA
19 shall provide to Class Counsel a semi-annual update of warranty claims that were made pursuant to
20 the terms of the Settlement Agreement and this Order and were recorded in NNA's warranty
21 database in the six-month period preceding the update.

22 D. Settlement Administrator

23 1. NNA shall pay all fees and costs of the Settlement Administrator for services
24 rendered by the Settlement Administrator in performing the tasks assigned to it by this Settlement
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1 Agreement. If NNA disputes the reasonableness of any invoice submitted to it by the Settlement
2 Administrator and the dispute is not resolved by NNA and the Settlement Administrator, either of
3 them may submit the dispute to the Court for a ruling by the Court applying its own Preliminary
4 Approval Order and Final Approval Order.

5
6 2. The Settlement Administrator shall make available a web site that Settlement
7 Class Members can visit to obtain additional Claim Forms. The Settlement Administrator also shall
8 establish a toll-free number that Settlement Class Members can call to obtain additional Claim
9 Forms and information about the Claims Forms.

10 E. Attorneys' Fees and Costs

11 1. NNA shall pay attorneys' fees and costs to Class Counsel in an amount to be
12 agreed upon by NNA and Class Counsel in further good-faith negotiations. Any such agreed
13 amount will be subject to Court approval, which approval shall be stated in an order of the Court.

14 2. If NNA and Class Counsel are unable to reach agreement on the amount of
15 attorney's fees and costs to be paid to Class Counsel by NNA, the Court will determine, approve,
16 and order the payment of that amount pursuant to an application by Class Counsel for fees and costs
17 and an evidentiary hearing. At any such hearing, the Court will determine the monetary value of the
18 settlement to the Settlement Class, which monetary value as so determined shall be neither less than
19 \$1,480,000 nor greater than \$8,560,000.
20

21 3. NNA shall not appeal the amount of any award of attorneys' fees and costs
22 agreed upon by NNA and Class Counsel or determined by the Court pursuant to the evidentiary
23 hearing referred to in paragraph IV.E.2 of this Settlement Agreement.

24 4. If, after 60 days from the entry by the Court of the Final Approval Order and
25 the judgment therein, no notice of appeal of the judgment or any order in the Action has been filed,
26 the time provided for in Rule 2 of the California Rules of Court to take any such appeal has expired,
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1 and any right to take any such appeal has been waived or otherwise lost, or if each such appeal that
2 has been taken has been finally adjudicated and the judgment and Final Approval Order have been
3 upheld in all respects by each such final adjudication, NNA shall, as soon as practicable, but within
4 no more than ten additional days, pay to Class Counsel, in accordance with the terms of the Court's
5 order granting Class Counsel's application for an award of attorneys' fees and expenses pursuant to
6 paragraph IV.E.1 or IV.E.2 of this Settlement Agreement, the sum so awarded and approved by the
7 Court. NNA shall make this payment by depositing through a wire exchange, into a Murdock
8 Goldenberg Schneider & Groh, LPA account with Key Bank's location in downtown Cincinnati,
9 Ohio, the sum so awarded and approved by the Court. Class Counsel shall provide to NNA in a
10 timely manner all wiring and account information necessary to enable NNA to make such a deposit
11 within the time required.
12

13
14 5. If any notice of an appeal from the Final Approval Order or from the
15 judgment therein is timely filed by any party, objector, claimant, or other Person, the Class
16 Settlement shall not be or become final or effective, and NNA shall not be obliged to make any
17 payment to Class Counsel, until ten days after each such appeal has been finally adjudicated and the
18 Final Approval Order and the judgment therein have been upheld in all respects by each such final
19 adjudication.
20

21 F. Payment to Class Representative

22 1. If, after 60 days from the entry by the Court of the Final Approval Order and
23 the judgment therein, no notice of appeal of the judgment or any order in the Action has been filed,
24 the time provided for in Rule 2 of the California Rules of Court to take any such appeal has expired,
25 and any right to take any such appeal has been waived or otherwise lost, or if each such appeal that
26 has been taken has been finally adjudicated and the judgment and Final Approval Order have been
27 upheld in all respects by each such final adjudication, NNA shall, as soon as practicable, but within
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1 ten additional days, pay to Plaintiff, as the class representative, an incentive award in an amount to
2 be set by the Court. The amount awarded shall not exceed \$5,000.00. NNA shall make this
3 payment by depositing through a wire exchange, into the Murdock Goldenberg Schneider & Groh,
4 LPA account specified in paragraph IV.E.4 above, in trust for the benefit of Plaintiff, the sum so
5 awarded and approved by the Court. Class Counsel shall provide to NNA in a timely manner all
6 wiring and account information necessary to enable NNA to make such a deposit within the time
7 required.
8

9 2. If any notice of an appeal from the Final Approval Order or from the
10 judgment therein is timely filed by any party, objector, claimant, or other Person, the Class
11 Settlement will not be or become final or effective, and NNA shall not be obliged to make any
12 payment to Plaintiff, until ten days after each such appeal has been finally adjudicated and the Final
13 Approval Order and the judgment therein have been upheld in all respects by that final adjudication.
14

15 G. Additional Termination Right

16 Unless NNA provides to Class Counsel a waiver as described in paragraph II.B of this
17 Settlement Agreement, no obligation on the part of NNA under this Settlement Agreement will
18 accrue, and the Class Settlement will not be effective if either (a) the Court does not certify the
19 Settlement Class or (b) the Court changes any of the terms of this Settlement Agreement submitted
20 by the Parties for the Court's approval. In addition to whatever other termination rights are set
21 forth in this Settlement Agreement, NNA has a right to terminate this Settlement Agreement in
22 accordance with the terms reflected in Exhibit H hereto, which will be filed under seal.
23

24 V. REQUESTS FOR EXCLUSION FROM THE CLASS SETTLEMENT

25 A. Any Person in the Settlement Class may request exclusion from the Class Settlement by
26 mailing or delivering to the Settlement Administrator a written request for exclusion from the Class
27 Settlement ("Request for Exclusion"). All Requests for Exclusion must be postmarked or delivered
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1 no later than the date specified in the Preliminary Approval Order. Such requests shall state the
2 name, address, and telephone number of the Person requesting exclusion and a clear statement that
3 the Person elects to be excluded from the Class Settlement and from any judgment entered
4 pursuant to the Class Settlement.

5
6 B. Persons in the Settlement Class who submit timely Requests for Exclusion (such
7 Persons are hereinafter referred to as "Opt-Outs") need not file an objection to the Class Settlement
8 and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

9 C. Commencing no later than ten business days following the completion of the mailing of
10 the Settlement Notice as specified in paragraph IV.A.1 above, the Settlement Administrator shall
11 provide to Class Counsel and NNA's counsel weekly written updates stating the number of Opt-
12 Outs.

13
14 D. Not later than ten business days after the deadline for submission of Requests for
15 Exclusion, the Settlement Administrator shall provide to Class Counsel and NNA's counsel a
16 written list of the names of all Opt-Outs (the "Opt-Out List") and copies of the Requests for
17 Exclusion. Class Counsel and NNA shall jointly report in writing to the Court, no less than three
18 days before the Fairness Hearing, the names of all Opt-Outs.

19 **VI. OBJECTIONS TO THE CLASS SETTLEMENT**

20 A. The Preliminary Approval Order shall provide that any Person in the Settlement Class
21 who wishes to object to the fairness, reasonableness, or adequacy of the Class Settlement or any
22 aspect of the certification of the Settlement Class, the designation of Plaintiff as the representative
23 of the Settlement Class, the appointment of Class Counsel as counsel for the Settlement Class, the
24 Class Settlement, the Settlement Agreement, or Class Counsel's petition for an award of attorneys'
25 fees and expenses, must file with the Court and serve on Class Counsel and NNA's counsel, at
26 least 40 days before the date of the Final Approval Hearing, a written objection ("Objection").
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1 Each Person in the Settlement Class making any such Objection ("Objector") must (1) include in
2 the Objection the Objector's name, address, and telephone number, (2) state in an accompanying
3 writing all Objections and the reasons therefore, and (3) attach all materials on which the Objector
4 intends to rely in support of each Objection

5
6 B. The Preliminary Approval Order also shall provide that any Person wishing to appear at
7 the Final Approval Hearing, either in person or by counsel, for the purpose of objecting to any
8 aspect of the certification of the Settlement Class, the designation of Plaintiff as the representative
9 of the Settlement Class, the appointment of Class Counsel as counsel for the Settlement Class, the
10 Class Settlement, the Settlement Agreement, or Class Counsel's petition for an award of attorneys'
11 fees and expenses, must file with the written Objection and serve, on Class Counsel and NNA's
12 counsel, a notice of that Person's intention to appear and a summary of the nature and source of
13 any evidence that Person intends to present at the Final Approval Hearing. Any Person in the
14 Settlement Class who does not timely file such a written Objection and notice of intent to appear at
15 the Fairness Hearing shall not be permitted to object at the Fairness Hearing to any aspect of the
16 certification of the Settlement Class, the designation of Plaintiff as the representative of the
17 Settlement Class, the appointment of Class Counsel as counsel for the Settlement Class, the Class
18 Settlement, the Settlement Agreement, or Class Counsel's petition for an award of attorneys' fees
19 and expenses. Any Person who does not timely file a written Objection shall be foreclosed from
20 seeking review of any such matter, order, or judgment, by appeal or otherwise.
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22

23 C. The Preliminary Approval Order also shall provide that any papers in response to any
24 Objection filed regarding any matter to be heard at the Final Approval Hearing shall be filed with
25 the Court and served on all Parties and on the objecting Person at least 10 days before the Final
26 Approval Hearing.
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VII. RELEASE, DISMISSAL AND JURISDICTION OF COURT

A. By executing this Settlement Agreement, the Parties acknowledge that, upon entry of the Final Approval Order by the Court, the Action shall be dismissed with prejudice, an order of dismissal with prejudice shall be entered, and all Released Claims shall thereby be conclusively settled, compromised, satisfied, and released as to the Releasees. The Final Approval Order shall provide for and effect the full and final release, by Plaintiff and all Settlement Class Members, of all Released Claims.

B. The Released Claims include all known and unknown claims, actions, and causes of action, other than for personal injury and wrongful death, and this Settlement Agreement is expressly intended to cover and include all such claims, actions, and causes of action, for losses, injuries, or damages of any type other than personal injuries. Settlement Class Members hereby expressly, knowingly, and voluntarily waive the provisions of Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Settlement Class Members expressly waive and relinquish all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, the Settlement Class Members hereby acknowledge that they are aware that they or their attorneys may hereafter discover facts or non-personal-injury or non-wrongful-death claims or facts in addition to or different from those which they now know or believe to exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims, known or unknown, suspected or unsuspected, that they have against

1 Releasees, except for any personal injury or wrongful death claims. In furtherance of such
2 intention, the release herein given by the Settlement Class Members to the Releasees shall be and
3 remain in effect as a full and complete general release of all non-personal-injury and non-
4 wrongful-death claims notwithstanding the discovery or existence of any such additional different
5 claims or facts.

6
7 C. Upon entry by the Court of the Final Approval Order, Plaintiff and Class Counsel shall
8 take all actions necessary to ensure that the Action is immediately dismissed with prejudice as to
9 NNA.

10 D. Notwithstanding the above, the Court shall retain jurisdiction over the Parties and the
11 Settlement Agreement with respect to the future performance of the terms of the Settlement
12 Agreement, and to assure that all settlement payments are properly made.

13
14 E. Upon entry of the Final Approval Order by the Court, (i) enforcement of the Settlement
15 Agreement shall be the exclusive remedy for Settlement Class Members with respect to all
16 Released Claims of Settlement Class Members; and (ii) the Releasees shall not be subject to
17 liability or expense of any kind to any of the Settlement Class Members, all of whom shall be
18 permanently barred and enjoined from initiating, asserting, or prosecuting against any of the
19 Releasees, in any federal or state court or tribunal, any Released Claim.

20
21 **VIII. COVENANT NOT TO SUE**

22 Plaintiff, on behalf of himself and the Settlement Class Members, (1) covenants and agrees
23 that neither Plaintiff nor any of the Settlement Class Members, nor anyone authorized to act on
24 behalf of any of them, will commence, authorize, or accept any benefit from any judicial or
25 administrative action or proceeding, other than as expressly provided for in this Settlement
26 Agreement, against Releasees, or any of them, in either their personal or corporate capacity, with
27 respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any
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1 alleged loss, harm, or injury allegedly caused by Releasees, or any of them, in connection with the
2 Released Claims; (2) waive and disclaim any right to any form of recovery, compensation, or other
3 remedy in any such action or proceeding brought by them or on their behalf; and (3) agree that this
4 Settlement Agreement shall be a complete bar to any such action or proceeding.

5
6 **IX. REPRESENTATIONS, WARRANTIES AND COVENANTS**

7 A. Class Counsel who are signatories hereof represent and warrant that they have the
8 authority, on behalf of Plaintiff, to execute, deliver, and perform this Settlement Agreement and to
9 consummate the transactions contemplated hereby. This Settlement Agreement has been duly and
10 validly executed and delivered by Class Counsel and Plaintiff and constitutes their legal, valid, and
11 binding obligation.

12 B. NNA represents and warrants that it has authority to execute, deliver and perform this
13 Settlement Agreement and to consummate the transactions contemplated hereby. The execution,
14 delivery, and performance by NNA of this Settlement Agreement, and the consummation by it of
15 the actions contemplated hereby, have been duly authorized by all necessary corporate action on
16 the part of NNA. This Settlement Agreement has been duly and validly executed and delivered by
17 NNA and constitutes its legal, valid, and binding obligation.

18 C. Each of the Parties has had the opportunity to receive, and has received, independent
19 legal advice from his or its attorneys regarding the advisability of making the Class Settlement, the
20 advisability of executing this Settlement Agreement, and the legal and income-tax consequences of
21 this Settlement Agreement, and fully understands and accepts the terms of this Settlement
22 Agreement.

23 D. Plaintiff represents and warrants that no portion of any claim, right, demand, action, or
24 cause of action against any of the Releasees that Plaintiff has or may have arising out of the Action
25 or pertaining to the design, manufacture, testing, marketing, purchase, use, sale, lease servicing, or
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1 disposal of Vehicles or otherwise referred to in this Settlement Agreement, and no portion of any
2 recovery or settlement to which Plaintiff may be entitled, has been assigned, transferred, or
3 conveyed by or for Plaintiff in any manner; and no Person other than Plaintiff has any legal or
4 equitable interest in the claims, demands, actions, or causes of action referred to in this Settlement
5 Agreement as those of Plaintiff himself.

6
7 E. Neither of the Parties relies or has relied on any statement, representation, omission,
8 inducement, or promise of any other party (or any officer, agent, employee, representative, or
9 attorney for any other party) in executing this Settlement Agreement, or in making the Settlement
10 provided for herein, except as expressly stated in this Settlement Agreement.

11 F. Each of the Parties has investigated the facts pertaining to the Settlement and this
12 Settlement Agreement, and all matters pertaining thereto, to the full extent deemed necessary by
13 that Party and his or its attorneys.

14
15 G. Each of the Parties has carefully read, and knows and understands, the full contents of
16 this Settlement Agreement and is voluntarily entering into this Settlement Agreement after having
17 had the opportunity to consult with, and having in fact consulted with, his or its attorneys.

18 H. Each term of this Settlement Agreement is contractual and not merely a recital.

19 **X. MISCELLANEOUS PROVISIONS**

20 A. Neither this Settlement Agreement, approved or not approved, nor any exhibit,
21 document, or instrument delivered hereunder, nor any statement, transaction, or proceeding in
22 connection with the negotiation, execution, or implementation of this Settlement Agreement, is
23 intended to be or shall be construed as or deemed to be evidence of any admission or concession by
24 NNA of any liability or wrongdoing or of the truth of any allegation in any of Plaintiff's pleadings
25 in the Action, for any purpose in any judicial or administrative action or proceeding, whether in
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1 law or in equity, regardless of whether this Settlement Agreement and the Class Settlement
2 ultimately become effective.

3 B. The headings of the sections and paragraphs of this Settlement Agreement are included
4 for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to
5 affect its construction.

6
7 C. None of the terms of this Settlement Agreement is severable from the others. If a court
8 should rule that any term is void, illegal, or unenforceable for any reason, however, NNA, in its
9 sole discretion, and Plaintiff, in his sole discretion (but acting in accord with his duties and
10 obligations as representative of the Settlement Class), may elect to waive any such deficiency and
11 proceed with the Settlement under the terms and conditions ultimately approved by the Court.

12 D. This Settlement Agreement, including all appendices and exhibits attached hereto may
13 not be modified or amended except in writing signed by both Parties hereto.

14
15 E. This Settlement Agreement may be executed in one or more counterparts, each of which
16 shall be deemed an original, but all of which together shall constitute one and the same instrument.

17 F. This Settlement Agreement shall be governed by and construed in accordance with the
18 substantive laws of the State of California, without giving effect to any of its conflict of laws
19 provisions.

20 G. All of the Exhibits of this Settlement Agreement are material and integral parts hereof,
21 and are fully incorporated herein by reference.

22
23 H. This Settlement Agreement and the Exhibits hereto constitute the entire, fully integrated
24 agreement among the Settling Parties and cancel and supersede all prior written and unwritten
25 agreements and understandings pertaining to the settlement of the Action. Except as otherwise
26 stated in paragraph II above, each of the Parties, including Plaintiff on behalf of himself and the
27 Settlement Class, expressly accepts and assumes the risk that, if facts or laws pertinent to matters
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1 covered by this Settlement Agreement are hereafter found to be other than as now believed or
2 assumed by that Party to be true or applicable, this Settlement Agreement shall nevertheless remain
3 effective.

4 I. The Parties reserve the right, subject to the Court's approval, to make any reasonable
5 extension of time that might be necessary to carry out any of the provisions of this Settlement
6 Agreement.

7 J. Any notice, request, instruction, or other document to be given by any Party to this
8 Settlement Agreement to any other Party to this Settlement Agreement (other than class
9 notification) shall be in writing and delivered personally or sent by registered or certified mail,
10 postage prepaid as follows:
11

12 To NNA:

13 Malcolm E. Wheeler
14 Wheeler Trigg & Kennedy, P.C.
15 1801 California Street, Suite 3600
16 Denver, Colorado 80202-2617

G. Leland Dutcher, Jr.
Senior Counsel
Nissan North America, Inc.
990 West 190th LStreet, M-8-A
Torrance, California 90502

17 To Class Counsel:

18 Jeffrey S. Goldenberg
19 Murdock Goldenberg Schneider & Groh, LPA
20 700Walnut Street, Suite 400
Cincinnati, Ohio 45202-2011

Sean R. Matt
Hagens Berman
1301 Fifth Avenue; Suite 2900
Seattle, Washington 98101

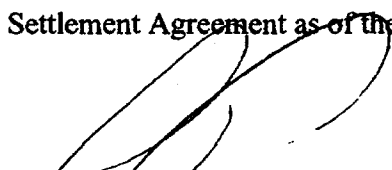
21 K. All applications for Court approval or Court orders required or permitted under this
22 Settlement Agreement shall be made with reasonable prior notice to both Parties.

23 L. The determination of the terms of, and the drafting of, this Settlement Agreement
24 including its exhibits, has been by mutual agreement after negotiation, with consideration by and
25 participation of both Parties and their respective counsel. Because this Settlement Agreement was
26 drafted with the participation of all Parties and their respective counsel, the presumption that
27 ambiguities shall be construed against the drafter does not apply. Each of the Parties was
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1 represented by competent and effective counsel throughout the course of settlement negotiations
2 and in the drafting and execution of this Settlement Agreement, and there was no disparity in
3 bargaining power among the parties to this Settlement Agreement.

4 M. This Settlement Agreement is binding on, and shall inure to the benefit of, the Parties
5 and their respective agents, employees, representatives, officers, directors, parents, subsidiaries,
6 assigns, executors, administrators, insurers, and successors in interest. All Releasees other than
7 NNA, which is one of the Parties, are intended to be and shall be deemed to be third-party
8 beneficiaries of this Settlement Agreement.
9

10 **IN WITNESS WHEREOF**, the Parties and their respective counsel have executed this
11 Settlement Agreement as of the date(s) indicated on the lines below.

12
13
14 
15 Jeffrey S. Goldenberg
16 MURDOCK GOLDENBERG SCHNEIDER
17 & GROH, LPA

Date: July 18, 2003

18
19 Sean R. Matt
20 HAGENS BERMAN, LLP

Date: July __, 2003

21
22 **Counsel for Plaintiff and Settlement Class**

23
24 Malcolm E. Wheeler
25 WHEELER TRIGG & KENNEDY, P.C.

Date: July __, 2003

26
27 G. Leland Dutcher, Jr.
28 NISSAN NORTH AMERICA, INC.

Date: July __, 2003

Counsel for Defendant Nissan North America, Inc.

1 represented by competent and effective counsel throughout the course of settlement negotiations
2 and in the drafting and execution of this Settlement Agreement, and there was no disparity in
3 bargaining power among the parties to this Settlement Agreement.

4 M. This Settlement Agreement is binding on, and shall inure to the benefit of, the Parties
5 and their respective agents, employees, representatives, officers, directors, parents, subsidiaries,
6 assigns, executors, administrators, insurers, and successors in interest. All Releasees other than
7 NNA, which is one of the Parties, are intended to be and shall be deemed to be third-party
8 beneficiaries of this Settlement Agreement.

9
10 **IN WITNESS WHEREOF**, the Parties and their respective counsel have executed this
11 Settlement Agreement as of the date(s) indicated on the lines below.
12

13
14 _____
15 Jeffrey S. Goldenberg
16 MURDOCK GOLDENBERG SCHNEIDER
17 & GROH, LPA

Date: July __, 2003

18 

19 _____
20 Sean R. Matt
21 HAGENS BERMAN, LLP

Date: July 25, 2003

22 **Counsel for Plaintiff and Settlement Class**

23 _____
24 Malcolm E. Wheeler
25 WHEELER TRIGG & KENNEDY, P.C.

Date: July __, 2003

26 _____
27 G. Leland Dutcher, Jr.
28 NISSAN NORTH AMERICA, INC.

Date: July __, 2003

Counsel for Defendant Nissan North America, Inc.

1 represented by competent and effective counsel throughout the course of settlement negotiations
 2 and in the drafting and execution of this Settlement Agreement, and there was no disparity in
 3 bargaining power among the parties to this Settlement Agreement.

4 M. This Settlement Agreement is binding on, and shall inure to the benefit of, the Parties
 5 and their respective agents, employees, representatives, officers, directors, parents, subsidiaries,
 6 assigns, executors, administrators, insurers, and successors in interest. All Releasees other than
 7 NNA, which is one of the Parties, are intended to be and shall be deemed to be third-party
 8 beneficiaries of this Settlement Agreement.
 9

10 **IN WITNESS WHEREOF**, the Parties and their respective counsel have executed this
 11 Settlement Agreement as of the date(s) indicated on the lines below.
 12

13
 14 _____
 15 Jeffrey S. Goldenberg
 16 MURDOCK GOLDENBERG SCHNEIDER
 17 & GROH, LPA

Date: July __, 2003

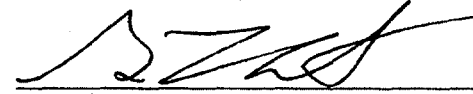
18 _____
 19 Sean R. Matt
 20 HAGENS BERMAN, LLP

Date: July __, 2003

21 **Counsel for Plaintiff and Settlement Class**

22 
 23 Malcolm E. Wheeler
 24 WHEELER TRIGG & KENNEDY, P.C.

Date: July 24, 2003

25 
 26 G. Leland Dutcher, Jr.
 27 NISSAN NORTH AMERICA, INC.

Date: July 18, 2003

28 **Counsel for Defendant Nissan North America, Inc.**